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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

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JAN - 8 2010

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IN THE MATTER OF THE SALE AND
TRANSITION BY ARIZONA PUBLIC SERVICE
TO ELECTRICAL DISTRICT NO. 3 OF CERTAIN
ELECTRICAL FACILITIES IN PINAL COUNTY
PURSUANT TO A.R.S. § 40-285(A) AND FOR
DELETION FROM ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY CERTAIN
AREAS OF PINAL COUNTY.

DOCKET NO. E-01345A-08-0426

PROCEDURAL ORDER

BY THE COMMISSION:

On June 8, 2009, the Arizona Corporation Commission's ("Commission") Hearing Division filed a Recommended Opinion and Order in the above-captioned matter, which was scheduled for discussion at the Commission's June 23 and 24, 2009 Regular Open Meeting. The Commission did not take final action on the matter during its June 2009 Open Meeting.

On October 2, 2009, the Electrical District No. 3 ("ED3") filed a Motion to Admit Late-Filed Exhibits, and attached a Rider for Low Income and Medical Assistance Supplemental to All Residential Price Plans (Ex ED3-21); Resolution No. 2009-06 of the Board of Directors of ED3, adopting an Amended Renewable Energy Policy (Ex Ed3-22); and a Term Sheet for Agreement between Arizona Public Service Company and ED-3 for Retail Energy Efficiency Program Sharing (Ex ED3-23).

On October 14, 2009, Pinal Energy LLC ("Pinal Energy") filed a Motion to Intervene in this matter and a Motion to Reopen the Record. Pinal Energy owns and operates an ethanol production facility in ED-3's service area. Pinal Energy claims that its rates increased after APS and ED3 announced their proposed transfer and that as part of its evaluation of the proposed transfer, the Commission did not evaluate whether APS received additional consideration in the form of higher power revenue from ED3.

1 On October 19, 2009, the Commission's Utilities Division ("Staff") filed a Response to
2 ED3's Motion to Admit the Late-filed Exhibits, stating that Staff believes the additional steps taken
3 by ED3 address some of the larger concerns raised at the June 23, 2009, Open Meeting and Staff
4 continues to support approval of the application.

5 On October 22, 2009, Staff filed a Response to Pinal Energy's Motion to Intervene. Staff
6 states that APS provided notice of the proceeding by publishing notice in the *Maricopa Monitor* on
7 February 27, 2009 and in the *Casa Grande Dispatch* on March 3, 2009, and mailing it to each
8 customer affected by the transfer as well as property owners in the transfer area. Staff notes there
9 were additional mailings and public meetings concerning the transfer. Further, Staff notes that Pinal
10 Energy is not an APS customer that will be transferred to ED3 as part of the transaction. Staff argues
11 the Motion to Intervene is too late and would unduly broaden the issues. Staff notes the Procedural
12 Order in this matter provided that all requests to intervene must be filed by March 18, 2009, but that
13 Staff finds it even more troublesome that the hearing has been held and a Recommended Opinion and
14 Order already issued.

15 On October 26, 2009, APS and ED3 filed a Joint Response to Pinal Energy's Motions. They
16 oppose intervention and reopening the record on the grounds that Pinal Energy failed to offer any
17 cause for its having failed to pursue intervention in a timely manner; failed to state any facts tending
18 to show that it is directly and substantially affected by the proceedings; and failed to state any basis
19 for its untimely request to reopen the administrative record.

20 On October 26, 2009, Pinal Energy filed a Response to Staff that claims that ED3 is suffering
21 from a "perfect storm" caused by escalating APS rates and the down-turn in the economy and is
22 struggling to pay its bills, and the Commission should reconsider whether it is in the public interest to
23 transfer APS customers to ED3.

24 On November 5, 2009, Pinal Energy filed a Reply to APS and ED3 and states, *inter alia*, that
25 Pinal Energy did not receive notice of the application, and further, that neither the notice nor the
26 application, disclosed that a fundamental part of the transaction was a new electricity requirements
27 contract between APS and ED3.
28

In addition to the above, in the time since the Recommended Opinion and Order was filed, APS has undergone a rate case. The record may benefit from updating the evidence concerning rate comparisons and the renewable and DSM programs available to ratepayers. The Commission will schedule a Procedural Conference for the purpose of receiving the procedural recommendations and oral argument from the parties with respect to the post-hearing filings and events.

IT IS THEREFORE ORDERED that a **Procedural Conference** for the purpose of taking procedural recommendations and oral argument, including the requested intervention, shall commence on **January 21, 2009, at 11:00 a.m.**, or as soon thereafter as is practical, at the Commission's offices, 400 West Washington, Room 222, Tucson, Arizona 85701.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized Communications) continues to apply to this proceeding and shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 6th day of January, 2010.


JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered
This 6th day of January, 2010 to:

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